



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Koehlke Components, Inc.--Reconsideration

File: B-243248.2

Date: April 8, 1991

Elmer S. Koehlke for the protester.
Behn Miller and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Prior dismissal of protest as untimely is affirmed where protest was not received by the General Accounting Office (GAO) until after 10-day filing deadline, despite protester's claim that it mailed the protest within 10 working days after learning of the adverse agency action, since under GAO Bid Protest Regulations the term "filed" means actual receipt by GAO.

DECISION

Koehlke Components, Inc. requests reconsideration of our dismissal of its protest against the award to Tri-Star Electronics under request for quotations No. DLA900-90-R-0429, issued by the Defense Logistics Agency. In its protest, Koehlke stated that it was notified of the award to Tri-Star on February 22, 1991; to be timely, Koehlke should have filed its protest within 10 working days of this date--March 8. Since this Office did not receive the protest letter until March 11, we dismissed the protest as untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991).

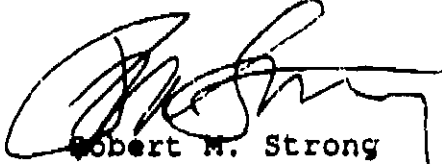
Koehlke now requests that we reconsider our dismissal on the ground that it mailed its protest by overnight express mail on March 5, and it therefore must have arrived at our Office before the March 8 filing deadline.

We affirm our prior dismissal.

The term "filed" is defined by our Bid Protest Regulations to mean actual receipt by the General Accounting Office; thus, it is the date when we receive a protest letter, not the date

when it is mailed, which governs timeliness under our Regulations, 4 C.F.R. § 21.0(g); Right Temporaries, Inc.-- Recon., B-239006.3, July 24, 1990, 90-2 CPD ¶ 68. Accordingly, a delay in the mails does not serve as a basis for waiving our Regulation and considering an untimely protest; in this regard, a protester makes use of the mails, including certified and overnight mail, at its own risk. Custom Programmers Inc., B-235716, Sept. 19, 1989, 89-2 CPD ¶ 245. Thus, although Koehlke claims to have mailed its protest letter on March 5,^{1/} since it was not received by our Office, and therefore not filed, until March 11, 1991, at 4:20 p.m., we find that the protest was properly dismissed as untimely.

The dismissal is affirmed.



Robert M. Strong
Associate General Counsel

^{1/} In this regard, we note that Koehlke has furnished us no evidence showing when the letter was mailed or that it was sent via overnight mail service. On the contrary, the copy of the protest that was received in our Office has a label attached to it indicating it was sent via certified mail.